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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/771,988 | 02/04/2004 | Bernadette Brown | 875P011216-US (PAR) | 3584 |

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|---|---|
| MAHONEY, CHRISTOPHER E | |
| ART UNIT | PAPER NUMBER |
| 2851 | |

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/771,988 | BROWN ET AL. | |
| | Examiner | Art Unit | |
| | Christopher E. Mahoney | 2851 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *05 July 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1 and 3-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

### *Claim Objections*

Claims 9 and 13 are objected to because of the following informalities:

*Claim 13 is not an original claim.* This claim is new to the application, In future communications it should be designated as either (amended) or (previously presented).

Clam 9 is objected to because "said two side panels" and "said top and bottom panels" lack antecedent basis (the terms are previously found in a "for"/intended use statement and therefore, have not been positively claimed).

Appropriate correction is required.

### *Response to Amendment*

The affidavits under 37 CFR 1.132 filed July 5, 2005 are insufficient to overcome the rejection of claims 1 and 3-13 as set forth in the last Office action because: the specification still does not clearly define what is considered to be a color corrected fabric. For example it is unclear what additives are used to enhance color. See the rejection under 35 USC 112, first paragraph for further reasoning.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 3-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically the specification does not discuss, describe, explain or otherwise disclose illumination through the panels without color alteration. The first mention of it is in the amendment to claim 1 on October 15, 2004.

Additionally it is unclear what the applicant means by color corrected. Based on the amendments and affidavits it could mean material which does not change the color temperature of light, it could mean material which does not have a fluorescent pigment, it could mean a material which does not have "additives to enhance color", or it could mean some combination of these. It is unclear which definition the applicant is trying to adopt. Furthermore, "additives to enhance color" are undefined. The applicant is respectfully requested to elaborate on the aforementioned additives.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1 and 3-13 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Neubart (Shutterbug magazine article). Neubart teaches a plurality of photography tents

comprising a series of fabric panels arranged to form an enclosure (see figures) said fabric being a light weight (nylon) color corrected, translucent material for diffusing light passing through (see figures) thereby providing a bright internal stage to fully illuminate a subject and keep the occurrence of shadows to a minimum. The frames allow the tents to be collapsible. The tents have at least one opening to allow access for a photographic device (i.e. camera as shown in a figure).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 4, 6-9, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wan in view of Zwezdaryk and Taylor. Wan teaches a collapsible "photography" tent (Fig. 3A; tent capable of being employed for various uses including storing cameras, use in a photo shoot serving as an internal stage, etc.) comprising fabric panels of light weight translucent material (column 2, lines 5-7) with perimeter metal frames sewn therein connected together to form an enclosure. In one of the panels is a door removable on at least two sides from its corresponding panel. Note: limitations appearing in "for"/intended use statements have been given no weight in the claims. Also the tent has top, bottom and side panels when situated on its side (one panel placed specifically on the ground). First, for claim 1, Wan fails to teach that the tent material is specifically nylon. Zwezdaryk teaches a tent made of light weight translucent nylon material (column 2, line 61-column 3, line 2). It would have been obvious to one of

ordinary skill in the art at the time of the invention to specifically use nylon light weight translucent material for the tent of Wan, depending on the desired need of the person constructing the tent, e.g. for economic reasons, for personal preference, etc. and since this specific material meets the translucent specification already desired by Wan. Note: it is being assumed that since the material of Zwezdaryk is identical in make to that of the disclosed invention's material, it inherently would be color corrected. No discussion of what, if anything, makes the fabric color corrected has been disclosed in the specification. Alternatively, since material for photographic lighting "must" be color corrected it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize color corrected material for the purpose of utilizing appropriately suitable material. The applicant should note that it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Second, Wan in view of Zwezdaryk fails to teach that a plastic removable rigid floor panel is located inside the tent. Taylor teaches a removable, rigid, floor panel (152) for use as a support inside a structure. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the panel of Taylor in combination with the tent of Wan in view of Zwezdaryk, to provide a support for articles inside the tent, e.g. for use as a night stand next to a sleeping bag, as a support for a photographed object, etc. Furthermore, the examiner takes Official notice that plastic panels are well known in the art and therefore, it would have been an obvious design consideration to make the panel specifically out of plastic, depending on the desired need of the person constructing the support, e.g. for economic reasons, for personal preference, water proof qualities, etc.

For claims 4, 6 and 13, Wan in view of Zwezdaryk and Taylor fails to teach that the door is removable on all three sides. The examiner takes Official notice that fabric closures removably attached, via either zippers or hook and loop fastener arrangements, to adjacent panels are well known in the art. Therefore, it would have been obvious to use a zipper or hook and loop fastener arrangement to attach the door of Wan in view of Zwezdaryk and Taylor to its panel and to make the door completely removable, so that when in its open position, the door can be located away from the tent panel, thereby not obstructing the opening formed therein.

For claim 8, Wan in view of Zwezdaryk and Taylor fails to teach that the metal frames are specifically steel. The examiner takes Official notice that steel frames are well known in the art. It would have been an obvious design consideration to make the frames specifically out of steel, depending on the desired need of the person constructing the frames, e.g. for economic reasons, for personal preference, strength qualities desired/required, etc.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wan in view of Zwezdaryk and Taylor as applied to claims 1, 4, 6-9, 11 and 13 above, and further in view of Gasperini. As stated above, Wan in view of Zwezdaryk and Taylor teaches the limitations of claim 1, including a collapsible tent. For claim 3, Wan in view of Zwezdaryk and Taylor fails to teach that a fabric sweep panel is located inside the tent. Gasperini teaches a fabric sweep panel (30) for use inside a structure. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the panel of Gasperini in combination with the tent of Wan in view of Zwezdaryk and Taylor, to provide a support/stage for articles inside the tent, e.g. for photographed objects, providing a contrasting background therefore, etc.

Claims 5, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wan in view of Zwezdaryk and Taylor as applied to claims 1, 4, 6-9, 11 and 13 above, and further in view of Husted. As stated above, Wan in view of Zwezdaryk and Taylor teaches the limitations of claims 1, 4 and 11, including a collapsible tent. For claim 5, 10 and 12, Wan in view of Zwezdaryk and Taylor fails to teach plural openings in the tent. Husted teaches plural zippered openings (46-48) in a tent. It would have been obvious to one of ordinary skill in the art at the time of the invention to add an opening, such as the zippered openings taught by Husted, in the tent of Wan in view of Zwezdaryk and Taylor, for example at the bottom thereof, to provide an additional place to enter into/go out of and/or place objects in or out of the tent enclosure.

***Response to Arguments***

Applicant's arguments filed July 5, 2005 have been fully considered but they are not persuasive. Any tent is capable of being employed for various uses including storing cameras, use in a photo shoot serving as an internal stage, etc. Furthermore, the limitations which purportadly define the tent over the general art, i.e. for specific photography use, are found in intended use/"for" statements and therefore, have not been given weight in the claims. The examiner contends that all of the structural limitations claimed are met by Wan in view of Zwezdaryk and Taylor (and Gasperini, Husted for the dependent claims). As for the nylon material, it is being assumed that since the material of Zwezdaryk is identical in make to that of the disclosed invention's material, it inherently would be color corrected. *No discussion of what, if anything, makes the fabric color corrected has been disclosed in the specification.* Furthermore, the addition of the "color alteration" limitation in one of the intended use

statements and the discussion of the fabric in the arguments provide more details for the color corrected material than what is presently disclosed in the application's specification.

As previously noticed, since the Official notice statements have not been challenged, these statements are being maintained, no corresponding references being required. Further discussion on these statements will not be entertained.

The applicant argues the meaning of the nylon color corrective material but it is noted that the limitation of nylon has been removed from independent claim 1. Nevertheless, the color corrected limitation is primarily what is at issue. The applicant argues that it is the key to the present invention. If that is indeed the case, it is not understood why such a key factor was not at least briefly discussed in further detail in the specification. Paragraph 20 of the specification recites "Each of the panels is constructed from a light weight fabric, such as, a color corrected translucent nylon material." It does not indicate that it has to be a color corrected material only that it is a light weight fabric. It suggests that it can be a color corrected material but does not define what that is.

Finally, the affidavit by Mr. Lehning in paragraph 7 indicates that anyone using translucent fabric for photographic lighting must use color corrected fabric. [emphasis added] Since it must be color corrected it would seem that one of ordinary skill in the art, knowing that fabric for photographic lighting must be color corrected would make sure that the material used in the rejection under 35 USC 103 supra would be of the color corrected type. The applicant should note that it has been held to be within the general skill of a worker in the art to select a

known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

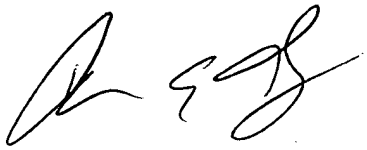
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher E. Mahoney whose telephone number is (571) 272-2122. The examiner can normally be reached on 8:30AM-5PM, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Nguyen can be reached on (571) 272-2258. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher E Mahoney
Primary Examiner
Art Unit 2851